

## **REMARKS**

### **I. Status of the Claims**

Claims 3, 8, and 10 have been cancelled without prejudice and without disclaimer. Claim 6 has been amended. No new claims have been added.

Claims 1, 6 and 9 are therefore presently pending in the case.

### **II. Support for the Amended Claim**

Claim 6 has been amended to incorporate language from cancelled claim 8. Support for this claim can be found throughout the specification as originally filed, at least at page 15, lines 1-7, and in claim 1 as originally filed.

It will be understood that no new matter is included within the amended claim.

### **III. Rejection of Claims 8 and 10 Under 35 U.S.C. § 112, Second Paragraph**

The Action first rejects claims 8 and 10 under 35 U.S.C. § 112, second paragraph, as allegedly indefinite. While Applicants submit that the claims are sufficiently definite, solely in order to progress the case more rapidly toward allowance claims 8 and 10 have been cancelled without prejudice and without disclaimer, thus rendering the present rejection moot.

As the rejection of claims 8 and 10 under 35 U.S.C. § 112, second paragraph, has been rendered moot, Applicants respectfully request withdrawal of the rejection.

### **IV. Rejection of Claims 3, 6 and 8-10 Under 35 U.S.C. § 102(e)**

The Action next rejects claims 3, 6 and 8-10 under 35 U.S.C. § 102(e), as allegedly anticipated by published U.S. Patent Application 2003/0207299 ("2003/0207299"). While Applicants do not necessarily agree with the present rejection, as claim 6 has been amended to recite a recombinant expression vector comprising an isolated nucleic acid molecule comprising the nucleotide sequence of SEQ ID NO:1, which the Examiner admits is neither taught nor suggested by 2003/0207299, and claims 3, 8 and 10 have been cancelled without prejudice and without disclaimer, Applicants submit that the rejection

of claims 3, 6 and 8-10 under 35 U.S.C. § 102(e) has been overcome, and respectfully request withdrawal of the rejection.

**V. Conclusion**

Applicants believe that the claims of the instant application meet all of the conditions for patentability and are in condition for allowance. Accordingly, an early indication of the same is respectfully requested. Should Examiner Monshipouri have any questions or comments, or believe that certain amendments of the claims might serve to improve their clarity, a telephone call to the undersigned Applicants' representative is earnestly solicited.

Respectfully submitted,

May 21, 2004

Date



David W. Hibler  
Agent for Applicants

Reg. No. 41,071

LEXICON GENETICS INCORPORATED  
8800 Technology Forest Place  
The Woodlands, TX 77381  
(281) 863-3399

**CUSTOMER # 24231**